

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

CHEETAH OMNI, LLC, §
§
Plaintiff, §
§
vs. § **CIVIL ACTION No. 6:09cv260**
§
VERIZON SERVICES CORP., et al. §
§
Defendants. §

ORDER

Before the Court is the parties' Motion For Entry Of An Order Regarding Use Of Confidential Information At Trial (Doc. No. 364). After consideration of the parties' positions, the Court adopts Plaintiff Cheetah's Version of paragraph 4 of the Order and **GRANTS** the motion:

1. The Court finds that the jury trial of this case may require the courtroom presentation of documents and testimony that the parties consider confidential and proprietary. The Court enters this Order to balance these concerns with the public interest in open and public trials and the efficient presentation of evidence to the jury. This Order supersedes all protective orders entered in this case for exhibits on either party's exhibit list and for deposition testimony designated for trial.
2. By February 28, 2011, each party shall identify any trial exhibit on either party's exhibit list, or any deposition testimony designated by either party, that the party considers Trial Sensitive Information. Trial Sensitive Information should only be information so confidential or proprietary that its presentation at trial poses a significant proprietary or financial risk to the party who provided the information. Trial Sensitive Information is

further limited to only information that has previously been maintained as confidential pursuant to an agreement of the parties or a protective order. The parties are ordered to limit their identification of Trial Sensitive Information to the maximum extent possible.

3. During the course of the trial, any party presenting Trial Sensitive Information shall:

- a. Notify the court and opposing counsel that the party intends to present Trial Sensitive Information;
- b. Request that any person ineligible to observe Trial Sensitive Information be excluded from the courtroom;
- c. Request that the court reporter designate as "Confidential" that portion of the trial transcript containing Trial Sensitive Information that should not be included in any public record of the trial proceedings; and
- d. Promptly notify the court and opposing counsel once the presentation of Trial Sensitive Information is completed so that the courtroom may be reopened to public view and the court reporter can resume transcribing on the public record.

4. In addition to the above measures to protect Trial Sensitive Information, the Court will instruct the jury as follows during its preliminary instructions and as appropriate as the trial presentation progresses:

Ladies and Gentlemen of the jury – The evidence in this case may involve the presentation of documents and testimony that certain parties consider too sensitive or confidential to be seen by just anyone. Accordingly, the Court has required the parties to identify this type of highly sensitive material before trial and give notice

before presenting it in the open courtroom. When a party gives me notice that highly sensitive material may be presented, I will exclude everyone from the courtroom except for the attorneys and others that the attorneys have agreed may see the information. This may require me to even exclude the parties' corporate representatives, Dr. Islam and [Verizon Corporate Rep]. It does not mean that they have done anything wrong and you should not draw a negative inference from it. It simply means that the person who provided the sensitive information has asked, for business reasons, that it remain confidential.

So ORDERED and SIGNED this 25th day of February, 2011.



John D. Love
UNITED STATES MAGISTRATE JUDGE